

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone by remodeling, rehabilitation or new construction. See 86 Ill. Adm. Code 130.1951. (This is a PLR).

March 9, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your representative's letter of February 16, 1999. Review of that request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in that request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This letter is written on behalf of COMPANY as a request for a private letter ruling under Title 2 Part 1200 Section 1200.110 of the Illinois Department of Revenue Regulations. The request is being made under a power of attorney from COMPANY. The power of attorney is enclosed with this letter.

The request involves issues related to the Retailers Occupation Tax and related taxes, specifically as they relate to Illinois enterprise zones.

We have two issues for which we are requesting rulings.

The first issue relates to procedures which have been established in order to take advantage of the sales tax exemption for sale of building materials under 86 Illinois Administrative Code Chapter 1 Section 130.1951.

COMPANY has been formed as an Illinois limited liability company. The company has two members, PERSON1 and PERSON2. The two members also together own two other Illinois businesses BUSINESS1 and BUSINESS2.

COMPANY will lease office space in a building owned by BUSINESS2. This space is located within the CITY Enterprise Zone. COMPANY has been organized to operate as an enterprise zone retailer of building materials for incorporation into real property located within the CITY Enterprise Zone.

COMPANY will register for the collection and payment of the Illinois Retailer's Occupation Tax and any other applicable taxes. The company will maintain its own bank accounts and books and records, separate from those of any affiliated corporations.

COMPANY will contract with BUSINESS1 for staffing of the retail operation. COMPANY will pay an arms-length management fee under this contract.

COMPANY has adopted the following operational procedures:

- (1) Contractors will issue COMPANY a purchase order on all purchases of building materials along with a Purchaser's Statement executed by the Contractor declaring that qualified materials are for incorporation into real estate in the enterprise zone.
- (2) Upon receipt of the contractor's purchase order, COMPANY will prepare and mail to the supplier a separate purchase order incorporating contractor's purchase order as an attachment. COMPANY will provide a properly executed resale certificate to the supplier. COMPANY will not maintain an inventory of building materials. The materials will be drop shipped by the supplier directly to the job site.
- (3) Upon receipt of an invoice from the supplier, COMPANY will invoice the contractor for the amount due.
- (4) COMPANY will pay the supplier with a check drawn from the separate account established by COMPANY.

Specific purchasing instructions have been established by COMPANY and are included as an attachment.

We are requesting a ruling on the following question. Does the above outlined methodology conform to the Department's regulations found at 86 Illinois Administrative Code Ch. 1 Sec. 130.1951, and if so will COMPANY be considered a qualified retailer for purposes of the enterprise zone building materials exemption?

The second issue relates to a specific construction project currently in the bidding state. The project involves the construction of a 634 megawatt natural gas fired power plant to be located within the CITY Enterprise Zone. The project involves new construction within the enterprise zone. A summary of the project as explained in a press release issued by COMPANY2 is included as an attachment.

The facility will include three utility grade combustion turbine generators (CTG), three heat recovery steam generators (HRSG), and one single automatic extraction condensing steam turbine generator (STG). The project also involves fabrication of a

pipe rack for water supply, gas supply, and wastewater discharge services which will be furnished by the refinery. The pipe rack and associated piping will tie in (interface) to the existing refinery pipe rack. These turbines and the interface piping will represent a significant portion of the cost of the project. The turbines and piping and their relationship to the project are described in an excerpt from the PROJECT specifications (attached) which summarizes the scope of the project.

The turbines and piping, in our opinion, represent building materials which will be physically incorporated into real estate located in an enterprise zone by new construction.

The question for which we request a ruling is whether the generators described above and the pipe rack, pipe, supports and piping tie-ins qualify as building materials for purpose of the sales tax exemption under 86 Illinois Administrative Code Chapter 1 Section 130.1951 if purchased from a qualified retailer located within the CITY Enterprise Zone.

As this request deals with a specific project which will be bid in a very short time, time of is the essence. We would appreciate your expeditious response.

We believe the above information to be a complete statement of all material facts. There are no contracts, licenses, agreements or documents relevant to the request which have not been furnished other than the bid specifications which due to the volume of said document has not been included as an attachment. This information is available and can be presented if so requested.

No audit or litigation is pending between the Department of Revenue and the parties requesting the ruling.

To the best of my knowledge and the members of COMPANY the Department of Revenue has not ruled previously on this or any similar issue for the taxpayer or a predecessor nor has the same or similar issue been previously submitted by the taxpayer to the Department.

COMPANY believes that 86 IAC Chapter 1 Section 130.1951 supports the positions herein put forth and knows of no authorities contrary to these views.

Please do not hesitate to contact me at the number listed below with any questions you may have.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building

materials that will be incorporated into real estate located in the enterprise zone by remodeling, rehabilitation or new construction.

In general, in order for businesses to qualify for the exemption as retailers, they must comply with the following requirements:

1. Retailers must have an identifiable physical presence in the municipality or the county that has established the enterprise zone;
2. Retailers must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone;
3. Retailers must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

In your letter, you have indicated that COMPANY will have a physical location within COUNTY which established the CITY Enterprise Zone. Further, you have attached a copy of the NUC-1 filed by COMPANY which indicates that COMPANY will be registered with the Department as a retailer at a location in CITY, COUNTY, Illinois which is within the county that established the CITY Enterprise Zone. Lastly you have indicated that you will be able to document that the acceptance of the purchase order will be at COMPANY location within the Enterprise Zone. There is no requirement that the materials be physically received at the retailer's location. Based upon these representations, it appears that the documentation used by for qualifying sales complies with the requirements necessary for retailers to make tax-free sales within an enterprise zone.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate. G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940.

As stated above, such contractors may purchase items tax-free if the items are to be incorporated into real estate within an enterprise zone and the items are purchased from qualifying retailers. In the attached PROJECT specifications, it is indicated that "[s]ervices supplied from the refinery will, in general, be installed on a pipe rack that extends from the Refinery to the Facility." Further, the specifications state that to support the design of the pipe rack, the Refinery has agreed to abandon some or all of the rail spurs located in the area of construction. It appears from these representations that the pipe rack, pipe, supports and piping tie-ins are permanently affixed to real estate. Since the real estate is located within the enterprise zone, the items can be purchased tax-free when purchased from qualified retailers.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen
Chief Counsel

BL:MAJ:msk
Enc.